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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 WILLIE ULYSSES GRANT,  
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Petitioner,  
v.  
RICK HILL, Warden, et al.,  
Respondents.

Case No.: 11cv3015-JAH (LL)

**ORDER:**

**(1) ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND  
RECOMMENDATION (Doc. No. 54);**

**(2) GRANTING PETITIONER'S  
MOTION TO STAY AND ABEY  
(Doc. No. 53)**

**INTRODUCTION**

Petitioner Willie Ulysses Grant filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on December 23, 2011. Doc. No. 1. Pending before the Court is Petitioner's Motion to Stay and the Report and Recommendation ("Report") filed by the Honorable Judge Linda Lopez, United States Magistrate Judge, recommending the Motion to Stay be granted. After careful consideration of the pleadings, for the reasons set forth below, this Court **ADOPTS** the Magistrate Judge's Report in its entirety and **GRANTS** the motion to stay.

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1 **BACKGROUND<sup>1</sup>**

2 On September 9, 2019, Petitioner filed the Motion to Stay presently before the Court.  
3 Doc. No. 53. Petitioner requested the Court stay the proceedings while Petitioner exhausts  
4 grounds fifteen and sixteen of his amended petition for writ of habeas corpus in the  
5 California Supreme Court, or in the alternative, to find those grounds for relief are  
6 technically exhausted and excuse any procedural bar. *Id.* On October 24, 2019, Judge Linda  
7 Lopez issued a thorough Report and Recommendation recommending this Court grant  
8 Petitioner's Motion to Stay. Doc. No. 54. There, Judge Lopez found Petitioner satisfied the  
9 requirements to stay and abey his "mixed" federal habeas petition containing both  
10 exhausted and unexhausted claims while Petitioner returns to state court to exhaust  
11 previously unexhausted claims. *See* Doc. No. 54 at 8-12 (citing *Rhines v. Weber*, 544 U.S.  
12 269 (2005)). Specifically, Judge Lopez found Petitioner had good cause to justify his  
13 failure to exhaust the two additional claims in state court, the claims are not plainly  
14 meritless, and that nothing in the records indicates that Petitioner intended to cause any  
15 delay with respect to the unexhausted claims. *Id.* Further, the Report recommends this  
16 Court deny Petitioner's request to treat the unexhausted claims as technically exhausted,  
17 finding that Petitioner has not shown that a return to state court would definitely be futile.  
18 *Id.* at 7 (citing *Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996)).

19 Any objections to the Report and Recommendation were due November 7, 2019. *Id.*  
20 at 12. Respondents have not filed any objections.

21 **DISCUSSION**

22 A district judge "may accept, reject, or modify the recommended disposition" of a  
23 magistrate judge on a dispositive matter. Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. §  
24 636(b)(1). "[T]he district judge must determine de novo any part of the [report and  
25 recommendation] that has been properly objected to." Fed. R. Civ. P. 72(b)(3). However,  
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28 <sup>1</sup> The underlying facts set forth in the Report is adopted *in toto* and referenced as if fully set forth herein.

1 “[t]he statute makes it clear that the district judge must review the magistrate judge’s  
2 findings and recommendations de novo *if objection is made*, but not otherwise.” *United*  
3 *States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *see also Wang v.*  
4 *Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). “Neither the Constitution nor the statute  
5 requires a district judge to review, *de novo*, findings and recommendations that the parties  
6 themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121. When no objections are  
7 filed, the Court may assume the correctness of the magistrate judge's findings of fact and  
8 decide the motion on the applicable law. *Campbell v. United States Dist. Court*, 501 F.2d  
9 196, 206 (9th Cir.1974); *Johnson v. Nelson*, 142 F.Supp.2d 1215, 1217 (S.D. Cal. 2001).

10 As such, the Court assumes the correctness of the Magistrate Judge's factual findings  
11 and adopts them in full. The Court has conducted a *de novo* review, independently  
12 reviewing the Report and all relevant papers submitted by the parties and finds that the  
13 Report provides a cogent analysis of the issues presented in the motion. The Court  
14 concludes that the Magistrate Judge correctly found that the Petitioner meets the standard  
15 for a stay and abeyance in order to exhaust previously unexhausted claims in state court.

## 16 CONCLUSION AND ORDER

17 Based on the above, IT IS HEREBY ORDERED:

18 (1) The findings and conclusions of the Magistrate Judge presented in the Report  
19 and Recommendation are **ADOPTED** in its entirety, (Doc. No. 54);

20 (2) Petitioner’s Motion to Stay and Abey the First Amended Petition is  
21 **GRANTED**, (Doc. No. 53);

22 (3) Petitioner’s request to treat his two claims not yet presented to the California  
23 Supreme Court as technically exhausted is **DENIED**;

24 (4) Petitioner is directed to:


25 (a) file an exhaustion petition in state court within twenty-one days of the stay;

26 (b) file a status report every ninety days that details his progress in exhausting  
27 his two claims in state court;

1 (c) within thirty days of the state court's decision resolving the claims, file a  
2 motion requesting that the stay be lifted and that he be granted leave to file a  
3 Second Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §  
4 2254 that shall include a proposed Second Amended Petition containing all  
5 grounds for relief.

6 **IT IS SO ORDERED.**

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9 DATED: January 30, 2020

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12 JOHN A. HOUSTON  
13 UNITED STATES DISTRICT JUDGE  
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